IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 9210 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHWIN SUKHABHAI KATARA,

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 9210 of 2003

MR BM MANGUKIYA for Petitioner No. 1

MS BELA A PRAJAPATI for Petitioner No. 1

MR SUDHANSHU S PATEL, ADDL PUBLIC PROSECUTOR for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 28/11/2003

ORAL JUDGEMENT

#. Rule. Mr.Sudhanshu Patel, learned Additional Public Prosecutor, waives service of Rule.

#. The applicant, who was working as police constable, has been charged to have committed offences punishable under Sections 457, 380, 409, 119, 120B and 201 of the Indian Penal Code, whereby the Muddamal - currency worth Rs.25,00,000/= and odd lying in the police custody has been siphoned out with the help of the co-accused.

#. The learned advocate Mr.B.M.Mangukia appearing for the applicant submitted that investigation is over and chargesheet is filed. The applicant is a police constable and is not likely to abscond. He also submitted that the entire amount has been recovered. The role attributable to the applicant is at the most that of a abettor and of destruction of evidence and that the evidence is not complete. He has drawn attention to statements of Rupaben and Chunilal and submitted that the statement of Lakhiben, wife of Chunilal, is missing. He therefore submits that this application may be positively considered and the applicant may be enlarged on bail on whatever conditions that may be deemed proper by this Court.

#. The application is opposed by the learned Additional Public Prosecutor Mr.Sudhanshu Patel. According to him, the applicant is charged with offence punishable with imprisonment for life. He submitted that he is a policeman who is supposed to protect the property, instead, he has indulged in illegal activity. According to the learned APP, it is true that Rupaben, in her statement, says that she does not know Ashwin who had delivered the goods. It is also true that in Rupaben's statement, there is no reference to presence of Lakhiben and it is equally true that Chunilal states that it was Lakhiben who informed him about the applicant having left the goods at his house. But, he submitted that, Chunilal, in his statement, in terms, has stated that it was the applicant who said that he had left the goods at Chunilal's house, and therefore, non recording of statement of Lakhiben or Rupaben not knowing the applicant would be of little relevance. He submitted that considering that the applicant has indulged himself in an activity which would affect law enforcement machinery and its reputation, the application may be rejected.

#. Having regard to rival circumstances, it has to be recorded at the outset that at this stage the Court is

not expected to enter into considering the credibility or otherwise of the evidence collected by the investigating agency. The court has not to evaluate and enter into detailed documentation of the material on record. It has only to examine whether prima-facie, involvement of the accused is indicated or not, and if the answer is in positive, the court has to follow the settled principles for grant or rejection of bail.

#. In the instant case, prima-facie, it appears that there is material to implicate the applicant with the offences that he is charged with. The applicant is a police constable who has siphoned out a huge amount of Rs.25,00,000/= and odd with the help of the co-accused, and there is material to show that he had placed Muddamal - currency notes at the house of witness Chunilal. The statements of Chunilal and Rupaben, mother of Chunilal, prima-facie indicate this aspect. The amount has also been recovered.

#. The contention that the role of the applicant is only of an abettor or that destroying the evidence prima-facie does not seem to be borne out from the material on record, or non recording of statement of Lakhiben, as discussed above, by itself will not snap the consistency of material available against the applicant in the form of recovery/ discovery of Muddamal at the instance of the applicant, the statements of Chunilal and Rupaben, besides other statements of witnesses.

#. The opinion of this Court, therefore, prima-facie is that there is material to connect the applicant with the offences with which he is charged. Considering that the applicant belongs to police department and the nature of charges and evidence against him, this Court is of the view that possibilities of the applicant tampering with the evidence cannot be ruled out. It is a case where the protector has turned into a perpetrator. This Court is, therefore, not inclined to entertain this application and it is rejected accordingly. Rule is discharged.

(A.L.DAVE, J.)

(sunil)